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January 31, 2012

The Honorable Senator Dennis Egan
Chair – Senate Labor & Commerce Committee
Alaska State Legislature
State Capitol – Room 510
Juneau, AK 99801

Re: Senate Bill 122

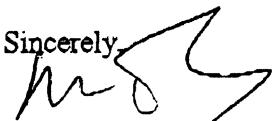
Dear Senator Egan:

I have personally provided support and underwriting services to title agents in Alaska since 1980. The title insurance policies issued in Alaska provide complete coverage to the insured for loss resulting from recorded matters, such as mortgages, regardless of date. Our agency agreements with companies such as Alaska USA Title Agency require that the agent conduct "a reasonable search and examination of the public records." This requirement is codified in Alaska at AS 21.66.170(a). This means the title agent should find all instruments of record that encumber the property whether the instrument was recorded five, twenty, fifty or one-hundred years ago. However, if a recorded instrument is "missed" during that search, regardless of date, and regardless of whether a title plant was used or not used for that search, the insured is fully protected by the terms of the title insurance policy.

As you know, state law may, or may not, impose a title plant requirement in order for new companies to become licensed. California statutes, for example, do not contain any title plant requirements. See enclosure. Idaho and Washington, on the other hand, require a title plant that goes back to the federal patent. Alaska is unique. It is the only state where the public recording system is run by a state agency – DNR. All other states keep these records at the county level. Alaska has a centralized system. And, as I have previously pointed out, in 1996 your legislature instructed DNR to begin the process of indexing recorded land title documents not just by name, but also by location. We call this "tract indexing." DNR's website, available to all, has become a viable alternative to the expenses associated with maintaining a private title plant *and it is now back-dated with documents recorded from today through January 1, 1973*. See enclosure.

I hope I have been able to clarify these matters. Please contact me if you have any questions. Thank you.

Sincerely,



Raymond L. Davis
Vice President – Counsel/Pacific Northwest Agency
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its members or insurance supervisory officials loss and expense statistics or other statistical information and data relating to the business of title insurance and who otherwise acts in an advisory capacity; and

- (iv) Written procedures approved by the Commissioner that provide for the protection and control of escrow funds in a manner consistent with the purposes of the law.

Id. § 12389.6. The Commissioner must approve or deny any written procedures within 60 days of receiving the request. If the Commissioner takes no action within the 60-day period, the request is deemed approved. *Id.*

e. Policies and Rates

Underwritten title companies are subject to the same policy and rate filing requirements as title insurers. These requirements are set forth in detail above in Part II, § 17 (rates) and Part II, § 16 (policies).

2. Minimum Search Requirements (Marketable Title Act, etc.)

California's marketable record title provisions, which are also applicable to insurers, are codified in Sections 880.020 through 880.370 of California's Civil Code. In connection with codifying these sections, the legislature declared as public policy the following:

- (i) Real property is a basic resource of the people of California and should be made freely alienable and marketable to the extent practicable in order to enable and encourage full use and development of the real property, including both surface and subsurface interests;
- (ii) Interests in real property and defects in titles created at remote times, whether or not of record, often constitute unreasonable restraints on alienation and marketability of real property because the interests are no longer valid or have been abandoned or have otherwise become obsolete;
- (iii) Such interests and defects produce litigation to clear and quiet titles, cause delays in real property title transactions, and hinder marketability of real property; and
- (iv) Real property title transactions should be possible with economy and expediency. The status and security of recorded real property title should be determinable to the extent practicable from an examination of recent records only.

Cal. Civ. Code § 880.020.

The legislature's purpose in enacting the marketable record title provisions of the Civil Code was to simplify and facilitate real property title transactions in furtherance of the policies set forth above. The legislature hoped to enable persons to rely on record title to the extent provided for under the Marketable Record Title Act.

Several California courts have applied the Act in the context of the enforceability of due on sale clauses contained in deeds of trust. One such case is *Miller v. Provost*, 26 Cal. App. 4th 1703 (1994). This case is summarized in detail under the Foreclosure section, Part VII, § 2.

3. Title Plant Requirements

California statutes do not contain title plant requirements. A 1980 court defined the term to mean "essentially a duplicate of county land records, but reorganized to indicate relevant data on a geographic or parcel-by-parcel basis." *Coldwell Banker & Co. v. Dept. of Ins.*, 102 Cal. App. 3d 381 (1980). The court estimated, at that time, that most underwritten title companies (approximately 90 percent) either own their own title plant or pay a fixed share of the cost of maintaining a jointly owned title plant. The court further noted that the remaining underwritten title companies use county records, have access to a title plant, or have a search package" arrangement whereby the requisite information is secured by others. Finally, the court indicated that, particularly in densely populated areas, the task of creating, maintaining and using a title plant is costly and time-consuming. Since entry into the title insurance business is dependent upon such an expense, success depends upon the ability to attract a substantial volume of business in a reasonably short period of time.

4. Unauthorized Practice of Law Issues

Business and Professions Code Section 6125 states "No person shall practice law in California unless the person is an active member of the State Bar." The unauthorized practice of law is a misdemeanor. Cal. Bus. & Prof. § 6126. The statute does not define, however, precisely what constitutes the "unauthorized" practice of law.

In *Baron v. City of Los Angeles*, 2 Cal. 3d 535, 542 (1970), the practice of law was described as follows, "as the term is generally understood, the practice of law is the doing and performing services in a court of justice in any manner depending therein throughout its various stages and in conformity with the adopted rules of procedure. But a larger sense it includes legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in court."

Notice:

Recorded and/or filed documents and ALL information contained within those instruments become the permanent public record and are available for public viewing and/or purchase.

Please be advised we are currently working on a film conversion project dating from December 31, 1972 backward. Images will be added to the database as available.

The following types of searches are available:

Name Search	Plat Search
Date Search	Survey Search
Document Number Search	MTRS Search
Document Type Search	Subdivision Name Search
Book and Page Search	No Plat Subdivision Search
Historic Books Search	Document Input & Unverified Status

See Search and Index Guidelines for helpful tips in searching Index records.
See Recording District History, and Miscellaneous District Facts.

Images of mining documents (Index Code M), Document Type - Mining and deed documents (Index Code D, Document Type - Deeds) recorded from January 1, 1973 forward are now available on the Internet.

Images of UCC document files/recorded from July 1, 2008 forward are now available on the Internet.

Plat and Survey images are also available on the Internet as a courtesy research tool only. Official certified copies must be requested and paid for through the recording district office where the plat was recorded.

Documents are entered in nonsequential batches. Temporary document number gaps may exist in current data.

If you identify a possible indexing error (typo, reversed names, etc) or can not locate the record you are trying to find please Contact Us

All documents are provided as a public service for your convenience. Updates and corrections occur on a daily basis; however, the State of Alaska shall not incur any liability for errors or omissions with respect to the information provided on this web site.

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Last updated on 01/31/2012.

Have a question about the Recorders Office? Please contact [your district office](#).

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